

Appearances:

For Appellants: Enrico Dell'Oso, Attorney at Law

For Respondent: F, Edward Caine, Senior Counsel

O P I N I O N

<u>Appellants</u>	<u>Years</u>	<u>Amounts</u>
Edith C. Panuzzi	1953	\$ 887.05
	1954	1,194.90
	1955	1,063.70
	1956	917.58
Catherine E. and John O. Conger	1953	470.82
	1954	519.06
Catherine E. Conger	1955	321.14
	1956	835.03
Estate of John O. Conger	1954	5.93
	1955	325.93

The Avalon Club is a partnership composed of Edith C. Panuzzi and Catherine E. Conger. Prior to his death, the partnership was composed of John O. Conger and Edith C. Panuzzi.

The partnership operated a legal draw poker establishment in Emeryville, California. The house (Avalon Club) collected half-hourly seat rentals from all players. It employed so-called house players to make up the necessary minimum of players to start games or keep them in progress. House players were provided with money with which to bet and pay seat rentals, and were

Appeal of Edith C. Panuzzi and Catherine E. Conger

ordered to play in a conservative manner. When a house player left a game, he returned to the house all of the money remaining in his possession, reduced from the original amount by his payment of betting losses and seat rentals or increased by his net winnings. At the end of each of the years in question, the total of the amounts returned by the house players was less than the total of the amounts originally provided them. The difference was deducted by the house as a business expense. No books were kept to distinguish between the seat rentals and the betting losses paid by the house players.

Respondent asserts that the losses are to be treated as **wagering** losses rather than as business expenses and that Section 17206(d) (formerly Section 17308) of the Revenue and Taxation Code controls. That section provides that "Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions."

In Appeals of Ernest J. and Evelyn Primm, et al., Cal. St. Bd. of Equal., July 23, 1959, 2 CCH Cal. Tax Cas. Par. 201-324, 3 P-H State & Local Tax Serv. Cal. Par. 58159, we held in a case identical to this that the transactions engaged in through the house players were wagering and losses arising from them were governed by Section 17308 (now Section 17206(d)) of the Revenue and Taxation Code. This section is a specific one dealing with losses arising from wagering transactions. It necessarily precludes the deduction of such losses as ordinary and necessary business expenses.

We hold, therefore, that the Primm case is applicable here and that the action of the Respondent must be sustained.

Some portion of the amounts disallowed as deductions by the Franchise Tax Board includes seat rentals paid by the house players. Although the house itself originally provided the funds for these rentals, it is possible that the house included them in gross income together with rentals paid by persons other than house players. The record before us does not establish whether this was the case nor does it indicate the amount of the house player seat rentals. Under the circumstances, we can make no adjustment with respect to this item.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

Appeal of Edith C. Panuzzi and Catherine E. Conger

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on protests to proposed assessments of additional personal income tax as follows:

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be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of February, 1962, by the State Board of Equalization.

George R. Reilly, Chairman  
John W. Lynch, Member  
Paul R. Leake, Member  
Richard Nevins, Member  
                    , Member

ATTEST: Dixwell L. Pierce, Secretary